er's failure to object did not constitute a consent to the jury's discharge, and that a retrial was unconstitutional, being in violation of the fifth amendment.

There seems to be a diversity of opinion as to when and under what circumstances a disagreement by a jury will bar a second trial. Some courts hold as in the present case in regard to waiver of a constitutional right. *Caucemi* v. *People,* 18 N. Y. 129; *State* v. *Hodkins,* 35 W. Va. 250. But in *People* v. *Curtis,* 76 Cal. 57, and *Morgan* v. *State,* 3 Sueed (Tenn.) 475, it is held that where the record does not show a discharge of the jury to have been without the prisoner's consent, it will be presumed that the discharge was with his consent. As to what constitutes a sufficient necessity and in what cases a judge may use his discretion in discharging a jury without barring a second trial see the following: *Williams* v. *Com.,* 44 Am. Dec. 403; *Page* v. *State 3 Ohio* St. 229; *Com.* v. *Townsend,* 5 Allen 216; *State* v. *Honeysutt,* 74 N. C. 391; *People* v. *Jones,* 48 Mich. 554; *Green* v. *State,* 10 Neb. 102; *Bishop's Criminal Law,* Sections 1033-36.

EJECTMENT—TENANT OF LIFE TENANT—MORTGAGEE.—BARSON ET AL. V. MULLIGAN ET AL., 73 N. Y. Supp. 262.—Life tenant of certain premises leased them to defendants who also purchased an overdue mortgage covering the same. On death of life tenant, plaintiffs, the reversioners, without paying the mortgage, brought ejectment to recover possession from defendants. *Held,* defendants having gone legally into possession have right to remain as mortgagees in possession, until their mortgage is paid. Van Brunt, P. J., and Hatch, J., dissenting.

The position of the Court is that consent of mortgagor or judgment upon the mortgage are not essential to constitute a party, a mortgagee in possession under the lien theory. *Winslow* v. *McCall,* 32 Barb. 241. Yet possession must in every case originally be lawful. *Russell* v. *Ely,* 2 Black (U. S.) 575, The decision is sound in reason even if it lacks precedent; as the dissenting judges assert. *Phyfe* v. *Riley,* 15 Wend. 248.

EQUITY—JURISDICTION—POLITICAL QUESTIONS—ENJOINING VIOLATION OF NEUTRALITY RIGHTS.—PEARSON V. PARSON, 108 Fed. Rep. 461 (La.).—Private persons asked for a bill to enjoin the shipment from a port of the United States of alleged military supplies destined for use by Great Britain in the war with the South African Republics. *Held,* that the questions involved are entirely political, and can be dealt with only by the executive branch of the government.

The complainants contended that by reason of the declaration of the treaty of Washington of May 8, 1871, relative to the "Alabama claims," in which it was declared that: "A neutral government is bound not to permit or suffer either belligerant to make use of its ports or waters as the base of naval operations against the other, or for the purpose of the renewal or augmentation of military supplies or arms," they were entitled to invoke the equity powers of this court to prevent such use. The court said that there was nothing in this treaty, when its history and purposes were considered, which would warrant the belief that the United States insisted upon inserting therein a new principle of international law. It is a well established principle of international law that private citizens of a neutral nation can lawfully sell

supplies to a belligerant. This principle has long since been settled in this country. *Sanctissima Trinidad,* 7 Wheat. 340, 16 *Am. & Eng. Enc. Law* (*2nd Ed.*), p. 1161.

FELLOW SERVANTS—INJURY TO EMPLOYEE—NOTICE TO SHIFT BOSS—NO NOTICE TO MASTER—NEGLIGENCE OF MASTER—INCOMPETENCE OF SERVANT.—WEEKS V. SCHARER, 111 Fed. 330 (Col.).—The plaintiff was injured owing to the incompetence of a fellow servant, which incompetence had been reported to a shift boss, who directed a gang of men and supervised their labor, but who had no authority to hire or discharge employees. *Held,* that the plaintiff had no cause of action against his employer, since he and the shift boss were fellow servants, and notice to the shift boss was not notice to the master.

Courts have differed much as to when a superior was and when he was not a fellow servant of an inferior. The present case reviews the decisions on this subject, and draws from them these deductions, viz., that every superior servant, charged with supervising the work of men under him, unless he is authorized to hire or discharge them, is simply a fellow servant, for whose negligence the master is not responsible, and further that only that agent or officer, who has authority to select, discharge, or suspend the servants of his master, may charge his master by his knowledge of their incompetence.

GUARDIAN AND WARD—SALE OF REAL ESTATE—SPECIAL BOND—OMISSION—VALIDITY OF SALE—HUGHES V. GOODALE, 66 Pac. 702 (Mont.).—By statute, it is provided that a guardian authorized to sell real estate, must, before sale, give bond to a probate judge. *Held,* that a sale by a guardian duly appointed and qualified, but who ommitted to give the special bond required was not void.

The provision that a sale bond shall be given is one of great importance to the rights of the wards and it has been generally held that such a provision is mandatory and not directory only, the bond being a condition precedent to validity of sale. *Am. & Eng. Enc.,* 3 ed. XV., p. 61; *Williams* v. *Morton,* 38 Me. 47. But some of the cases uphold the contrary view as expressed here. *Arrowsmith* v. *Harmonnig,* 42 Ohio St. 254.

MASTER AND SERVANT—LIABILITY OF CITY—COLLISION.—THE MAJOR REYBOLD, 111 Fed. 414 (Penn.).—A municipal corporation is liable in a court of admiralty for a collision, caused by the negligence of its servants in charge of an ice-boat, which it owned, and which was being operated under the directions of the corporation, it being immaterial whether such boat was employed in a municipal service or under orders which were ultra vires.

It seems well settled in this country that in courts of law municipal corporations are not liable for the negligence of its agents in doing acts ultra vires. *Thayer* v. *City of Boston,* 19 Pick. 516; *Smith* v. *City of Rochester,* 76 N. Y. 506; *Seele* v. *Deering,* 79 Me. 343; *Spring* v. *Hyde Park,* 137 Mass. 554. This case, however, is brought in a court of admiralty, and the present decision is based almost solely on *Workman* v. *City of N. Y.,* 179 U. S. 552, in which four of the judges dissented from the majority opinion. That case decided that local decisions of a State Court could not abrogate maritime law, and that where the relation of master